IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

OP.No. 13529 of 2003(I)

PETITIONERS:
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1. **RAMESHAN ALAKKATANTAVIDA, HIGH SCHOOL ASSISTANT (HINDI), CHOTHAVOOR HIGH SCHOOL, P.O.CHAMBAD, THALASSERY, KANNUR DISTRICT.**

2. **MANAGER, CHOTHAVOOR HIGH SCHOOL, P.O. CHAMBAD, THALASSERY, KANNUR DISTRICT.**

BY ADV. SRI.P.M.PAREETH.

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY SECRETARY, DEPARTMENT OF GENERAL EDUCATION, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **DIRECTOR OF PUBLIC INSTRUCTIONS, THIRUVANANTHAPURAM.**

3. **DEPUTY DIRECTOR OF EDUCATION, KANNUR.**

4. **DISTRICT EDUCATIONAL OFFICER, THALASSERY, KANNUR DISTRICT.**

5. **M.SHAREENA, HIGH SCHOOL ASSISTANT, (HINDI) CHOTHAVOOR HIGH SCHOOL, P.O. CHAMBAD, THALASSERY, KANNUR DISTRICT.**

BY GOVERNMENT PLEADER SMT. T.B. RAMANI.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P. NO. 13529/2003:

ORDER ON C.M.P. NO. 22791/2003 IN O.P. NO. 13529/2003

DISMISSED

14/09/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE APPOINTMENT ORDER DTD. 15/10/1997 ISSUED BY THE P.2.

EXT.P.2: COPY OF THE APPOINTMENT ORDER DTD. 01/06/1998 ISSUED BY THE P.2.

EXT.P.3: COPY OF THE ORDER NO. K. DIS/EM3/27639/98/ADPI DTD. 30/04/1999 ISSUED BY THE R.2.

EXT.P.4: COPY OF THE ORDER NO. K. DIS. B4/5896/99. DTD. 25/03/2000 ISSUED BY THE R.4.

EXT.P.5: COPY OF THE APPOINTMENT ORDER AND ITS APPROVAL IN RESPECT OF THE R.5. ISSUED BY THE P.2. AND R.4. DT. 05/06/00.

EXT.P.6: COPY OF THE LETTER DTD. 08/10/2001 NO. EM3/61152/2000/DPI/K. DIS. ISSUED BY THE R.2. TO THE P.2.

EXT.P.7: COPY OF THE APPEAL DTD. 07/11/2001 SUBMITTED BY THE P.2. BEFORE THE R.1.

EXT.P.8: COPY OF THE REPRESENATION DD. 10/09/2002 SUBMITTED BY THE P.1 BEFORE THE R.1.

EXT.P.9: COPY OF THE JUDGMENT DTD. 01/10/2002 IN O.P. NO. 28140/2002 (Y) OF THIS HONOURABLE COURT.

EXT.P.10: COPY OF THE CONFIRMATION COPY OF THE TELEGRAM DTD. 22/03/2003 ISSUED BY THE R.1. NO. 62896/E1/2001/G. EDN.

O.P. NO. 13529/2003:

EXT.P.11: COPY OF THE G.O. NO. (RT) 1272/03/G. EDN. DTD. 01/04/2003 ISSUED BY THE R.1.

EXT.P.12: COPY OF THE APPOINTMENT ORDER AND ITS APPROVAL IN RESPONDENT OF SMT. JALJA.K.ISSUED BY P.2. AND R.4. DTD. 10/06/96.

EXT.P.13: COPY OF THE COVERING LETTER NO. L. DIS. B4/140/99 DTD. 25/03/99 ISSUED BY THE R.4. TO THE P.2.

EXT.P.14: COPY OF THE LETTER DTD. 22/07/2002 NO. K. DIS. EM3/3032/2002 ISSUED BY THE R.2. TO THE R.5.

EXT.P.15: COPY OF THE G.O. (P). NO. 7/95/P&ARD. DTD. 30/03/95.

//TRUE COPY//

prv.

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.13529 OF 2003

Dated this the 14th day of September, 2007

JUDGMENT

This writ petition relates to the question whether the 5th respondent, who was appointed as HSA (Hindi) in the Chothavoor High School on 8.6.1999, was entitled to be appointed on 15.10.1997 or 1.6.1998, the dates on which the petitioner was appointed as HSA (Hindi), the second among such appointments having become necessary owing to the intervening vacation.

2. The 5th respondent does not contest this writ petition.

3. Ext.P7 discloses the stand of the Manager. The 5th respondent's father M.Raghavan, a former UPSA of that institution, died on 8.8.1991, four years before the upgradation of that school as a high school. On his demise, going by para (4) of Ext.P7, his family moved out of the locality and the Manager was unaware of their whereabouts. According to him, he came

to know about the 5th respondent only on the basis of a letter dated 25.3.1999 of the District Educational Officer, received by him on 5.4.1999 (see para 3 of Ext.P7).

4. It is the admitted situation that the first petitioner was appointed as HSA (Hindi) on 1.6.1998, before the 5th respondent's claim under Rule 51 B of Chapter XIV A K.E.R. could be treated to have been made. Even if a Rule 51 B claimant has a preferential claim to appointment to the first occurring vacancy, on the facts and circumstances of this case, it is not the case of the 5th respondent before any authority, including this Court, that she had made any claim following the demise of her father on 8.8.1991, until some time in 1999. If that were so, the law relating to compassionate appointment would advise to hold that the 5th respondent was not entitled to be considered in terms of Rule 51 B, because, the yardsticks of compassionate appointment depend on the legislative wisdom to extend immediate succor to the family and belated claim under Rule 51 B would not, normally, be entertained, applying the parameters of law governing the situation laid by the Apex

Court and by this Court and in terms of the Government decisions at the relevant time.

5. The first petitioner had been working from 1.6.1998, after a break following his appointment on 15.10.1997, while the 5th respondent was appointed only on 5.6.2000, which was approved with reference to the occurrence of a vacancy. Therefore, she did not have any such preferential claim which could displace the appointment of the petitioner made at an earlier point of time, thereby depriving him of the fruits of his labour, while conferring on the 5th respondent the entitlement to reckon a retrospective date of appointment merely on account of a claim under Rule 51 B of Chapter XIV A K.E.R., which was not promptly claimed and pursued.

6. For the aforesaid reasons, the impugned decisions are vitiated by error of jurisdiction and are contrary to law. They are, therefore, arbitrary and liable to be set aside on the ground of being in violation of article 14 of the Constitution of India.

7. In the result, the impugned decisions are quashed and it is declared that the date of appointment of the 5th respondent will be treated as 5.6.2000, while the date of appointment of the first petitioner would be reckoned as 1.6.1998. The question whether his earlier appointment dated 15.10.1997 is to be approved and tagged along for determining his length of service is a matter left open to be considered by the competent authority, in accordance with law. The formal approval orders, following this judgment, shall be issued by the 4th respondent within an outer limit of two months from the date of receipt of a copy of this judgment. Since the petitioner had been working, it shall also be ensured that any arrears of salary and other dues as may be available to him in terms of such approval are also released within a further time limit of two months, positively.

The writ petition is allowed as above. No costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.13529 OF 2003

JUDGMENT

14th SEPTEMBER, 2007.

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